

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

STEPHEN HENRIQUES and DONNA LEE  
HENRIQUES,

Debtors.

Case No. 92-56703

Chapter 7

CALIFORNIA BUSINESS BANK,

Plaintiff,

Adversary No. 93-05150

vs.

**MEMORANDUM DECISION RE  
MOTION TO DISMISS FOR FAILURE  
TO STATE A CLAIM AND FOR  
SANCTIONS**

STEPHEN HENRIQUES and DONNA LEE  
HENRIQUES,

Defendants.

**INTRODUCTION**

Before the Court is the defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and for Sanctions. For the following reasons, both motions are denied.

**FACTS**

The plaintiffs, Stephen and Donna Henriques, filed a Complaint to Determine Extent, Validity, and Avoidability of Liens on March 22, 1993 to avoid the lien of California Business Bank pursuant to § 522(f). The defendant asserts that the debtors' claims are precluded by res judicata.

California Business Bank commenced an action prepetition against the debtors in Superior Court for breach of promissory notes and security agreements. It caused a TPO to be issued and

1 recorded a writ of attachment against the debtors' real property located on Enchanto Vista and on  
2 Piercy Road and their country club membership.

3 The debtor filed its bankruptcy petition on September 24, 1992. California Business Bank  
4 filed a motion for relief from stay in order to proceed to judgment and liquidate its claim in the  
5 Superior Court. The Court heard and granted the motion on April 16, 1993 after determining that  
6 perfection by writ of attachment related back to issuance of a TPO and that a country club  
7 membership is subject to attachment. The Court did not make any findings with respect to the  
8 avoidability of California Business Bank's lien under § 522(f).

9 The parties have reached stipulations resolving California Business Bank's claims against the  
10 debtors' real properties. The only issue remaining is the bank's claim of a lien against the debtors'  
11 country club membership.

### 12 13 DISCUSSION

14 A stay proceeding is summary in nature, and the scope of issues to be determined in stay  
15 proceedings is narrow and limited to those specified in the section 362. In re Johnson, 756 F.2d 738,  
16 740 (9th Cir. 1985), cert. denied, 474 U.S. 828 (1985); In re Ellis, 60 BR 432, 436 (9th Cir. BAP  
17 1986); In re Vitreous Steel Products Co., 911 F.2d 1223, 1232-34 (7th Cir. 1990). Questions of the  
18 validity of liens are generally not at issue in a stay hearing, but the only issue is whether the creditor  
19 has a colorable claim of a lien on property of the estate. In re Vitreous Steel Products Co., 911 F.2d  
20 at 1234. Rulings on issues that are not necessary in the relief from stay context does not preclude  
21 determination of these issues in a later adversary proceeding and is not res judicata. Id.

22 The preferred procedure to determine the validity of a lien is to file an adversary motion under  
23 BR 7001 rather than to resolve the issue in the stay context. See In re Yale Min. Corp., 39 BR 201,  
24 202 (Bankr. W.D. Va. 1984). It was not improper for the debtors to file this adversary proceeding,  
25 and it will not be dismissed on the basis that the issues have already been litigated.

26 Where there is an objectively reasonable basis for filing the pleading, sanctions are not  
27 appropriate. Conn v. Borjorquez, 967 F.2d 1418, 1421 (9th Cir. 1992). Under the circumstances, it  
28 was not unreasonable at the time to file the complaint.

**CONCLUSION**

The motion to dismiss is denied. Accordingly, the motion for sanctions is also denied.